

DEPARTMENT OF STATE REVENUE

02920946.LOF

LETTER OF FINDINGS NUMBER 92-0946 ITC

Adjusted Gross Income Tax

For Fiscal Years Ended September 30, 1982 through and including 1988

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

1. Gross Income Tax – Denial of Refund for year prior to 1987

Authority: IC 6-3-4-6; 45 IAC 3.1-1-94

The taxpayer protested the denial of refunds for the years prior to September 30, 1987.

STATEMENT OF FACTS

The taxpayer manufactured and sold products. The taxpayer was incorporated and located outside Indiana. The taxpayer was audited by the Internal Revenue Service and Revenue Agent Reports were issued. An audit was conducted in order to adjust the net operating loss carryovers based on changes made by the Internal Revenue Service's reports.

DISCUSSION

1. Gross Income Tax – Denial of Refunds for years prior to fiscal year end September 30, 1987.

The taxpayer alleges that refunds are due for fiscal years ended September 30, 1982, 1983, 1984 and 1987. Amended returns were filed for fiscal years 1982, 1983 and 1984 on June 30, 1988. The taxpayer paid additional tax when these returns were filed. No claims for refund were filed. On October 9, 1992, an audit was conducted to incorporate the Internal Revenue Service changes. The taxpayer does not protest the changes or the effects of the changes, but protest the failure of the department to issue refunds based on these changes. The auditor stated in the adjusting audit that no assessments or refunds could be made for years prior to fiscal year ended September 30, 1987. The taxpayer did not file claims for refund for the years at issue.

IC 6-3-4-6(b) provides:

Each taxpayer, except a resident individual, shall notify the department of any modification of:

- (1) a federal income tax returned filed by the taxpayer after January 1, 1978; or
- (2) the taxpayer's federal income tax liability for a taxable year which begins after December 31, 1977.

The taxpayer shall file the notice, on the form prescribed by the department, within one hundred twenty (120) days after the modification is made.

The taxpayer did not file amended returns nor notify the department in a timely manner. The amended returns filed for fiscal years 1982, 1983, and 1984, were filed in and the assessment paid June 30, 1988. The parameters for issuing a refund are contained in IC 6-8.1-9-1(a), which provides as follows:

If a person has paid more tax the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. In order to obtain the refund, the person must file the claim with the department within three (3) years after the later of the following:

- (1) The due date of the return.
- (2) The date of payment

For purposes of this section, the due date for a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund.

The taxpayer did not file a claim for refund prior to June 30, 1991 for tax years 1982, 1983 and 1984. Also, the taxpayer did not file a claim prior to January 15, 1992 for the tax year 1987, which is the last year at issue. In fact no claims for refund were filed. The auditor adjusted the net operating loss carryback, so the correct amount could be carried forward in the future. These adjustments do not open the statute of limitations for assessment or for refund.

FINDINGS

The taxpayer's protest is denied.